

**Before the
Federal Communications Commission
Washington, D.C. 20554**

Texas and Kansas City Cable Partners, L.P.,)	
d/b/a Time Warner Cable,)	
)	
Complainant,)	
)	
v.)	File No. EB-04-MD-013
)	
Southwestern Bell Telephone Company,)	
)	
Defendant.)	

MEMORANDUM OPINION AND ORDER

Adopted: February 17, 2005**Released: February 17, 2005**

By the Deputy Chief, Market Disputes Resolution Division, Enforcement Bureau:

1. On December 3, 2004, Texas and Kansas City Cable Partners, L.P., d/b/a Time Warner Cable ("Time Warner") filed a complaint¹ against Southwestern Bell Telephone Company ("Southwestern Bell") pursuant to section 224 of the Communications Act of 1934, as amended ("Act"),² and sections 1.1403(a) and 1.404 of the Commission's rules.³

2. Time Warner owns and operates a cable television system in Texas.⁴ Southwestern Bell, a subsidiary of SBC Communications, Inc., provides telecommunications and other services in Texas.⁵ Southwestern Bell owns or controls conduit along the Queen Isabella Causeway ("Causeway") in Texas, which it uses for wire communications.⁶ The Causeway provides the only bridge to South Padre Island in Texas,⁷ where Time Warner provides cable television, broadband, and information services to South Padre Island through its microwave facilities.⁸ In its Complaint, Time Warner alleges that it wishes to deploy fiber in order to

¹ Complaint, File No. EB-04-MD-013 (filed Dec. 3, 2004) ("Complaint").

² 47 U.S.C. § 224.

³ 47 C.F.R. §§ 1.1403(a), 1.1404.

⁴ Complaint at 7, ¶ 12.

⁵ Complaint at 7, ¶ 13.

⁶ Complaint at 7, ¶ 15.

⁷ Complaint at 1, ¶ 2; 7, ¶ 15.

⁸ Complaint at 1-2, ¶ 2.

provide better quality service and additional service offerings.⁹ Time Warner contends that it must access Southwestern Bell's conduit along the Causeway in order to deploy fiber, but that Southwestern Bell has refused to provide Time Warner access, in violation of section 224 of the Act and sections 1.1403(a) of the Commission's rules (47 C.F.R. § 1.1403(a)).¹⁰

3. Shortly after Time Warner filed its Complaint, the parties jointly advised the Commission that they wished to attempt to settle their dispute, and requested that the Commission suspend its consideration of the Complaint and stay Southwestern Bell's obligation to respond to the Complaint.¹¹ Commission staff granted that request on December 30, 2004. Since that time, the parties have engaged in a continuing effort to reach a negotiated resolution of this dispute. On January 21, 2005, the parties filed a Joint Status Report, which states that they have entered into an agreement that they "anticipate will resolve the principal issue" raised in the Complaint, *i.e.*, access to Southwestern Bell's conduit along the Causeway.¹² The Joint Status Report requests that the Commission hold the Complaint "in abeyance" until "certain milestones" have transpired, after which Time Warner anticipates withdrawing its Complaint.¹³ The parties believe that these "milestones" will occur by April 2005.¹⁴

4. We believe that Time Warner and Southwestern Bell have made significant progress in their efforts to resolve this dispute, and that these settlement efforts should continue. We conclude that the Complaint should be transferred to the inactive case docket in order to allow the parties to devote their full attention to resolving this dispute by agreement, without having to expend time and resources on the preparation of further pleadings in this case.

5. Accordingly, we hereby direct that the Complaint be converted to an inactive complaint with a new file number of EB-05-MDIC-0011, maintaining its original filing date of December 3, 2004. Commission staff will continue to monitor closely the parties' efforts to settle this dispute, and to offer their assistance in mediating the dispute, as needed. This conversion to inactive status is for administrative purposes only, and in no way will affect the rights of the parties, or any legal or factual issue in this proceeding.

6. At any time, either party, upon a showing of good cause, may move to re-convert the inactive complaint back to an active complaint. Upon the grant of such a motion, Southwestern Bell will be required to file a Response to the Complaint pursuant to section

⁹ Complaint at 1-2, ¶ 2.

¹⁰ Complaint at 3-4, ¶¶ 5-6.

¹¹ Letter from Gardner F. Gillespie, counsel for Time Warner, and Jennifer Byrd, counsel for SBC Telecommunications, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, File No. EB-04-MD-013 (filed Dec. 28, 2004). The parties later renewed their request to the Commission to suspend consideration of the Complaint and to stay Southwestern Bell's obligation to respond to the Complaint, in light of the parties' ongoing mediation efforts. Letter from Gardner F. Gillespie, counsel for Time Warner, and Jennifer Byrd, counsel for SBC Telecommunications, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, File No. EB-04-MD-013 (filed Jan. 21, 2005). Commission staff also granted this renewed request.

¹² Joint Status Report, File No. EB-04-MD-013 (Feb. 9, 2005) ("Joint Status Report").

¹³ Joint Status Report at 2.

¹⁴ Joint Status Report at 2.

1.1407 of the Commission's rules,¹⁵ within 30 days following the issuance of an order re-converting the Complaint back to active status.

7. Accordingly, IT IS ORDERED, pursuant to sections 4(i), 4(j), and 224 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), and 224, and sections 1.1401-1.1418 of the Commission's rules, 47 C.F.R. § 1.1401-1.1418, and the authority delegated in sections 0.111 and 0.311 of the Commission's rules, 47 C.F.R. §§ 0.111, 0.311, that Texas and Kansas City Cable Partners, L.P., d/b/a Time Warner Cable's Complaint be converted to an inactive complaint with a file number of EB-05-MDIC-0011 and a filing date of December 3, 2004.

8. IT IS FURTHER ORDERED, pursuant to sections 4(i), 4(j), and 224 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), and 224, and sections 1.1401-1.1418 of the Commission's rules, 47 C.F.R. § 1.1401-1.1418, and the authority delegated in sections 0.111 and 0.311 of the Commission's rules, 47 C.F.R. §§ 0.111, 0.311, that the docket established in the above-captioned Complaint proceeding shall be transferred in its entirety to the inactive complaint docket.

9. IT IS FURTHER ORDERED, pursuant to sections 4(i), 4(j), and 224 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), and 224, and sections 1.1401-1.1418 of the Commission's rules, 47 C.F.R. § 1.1401-1.1418, and the authority delegated in sections 0.111 and 0.311 of the Commission's rules, 47 C.F.R. §§ 0.111, 0.311, that either party, upon a showing of good cause, may move to re-convert the inactive complaint back to an active complaint.

10. IT IS FURTHER ORDERED, pursuant to sections 4(i), 4(j), and 224 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), and 224, and sections 1.1401-1.1418 of the Commission's rules, 47 C.F.R. § 1.1401-1.1418, and the authority delegated in sections 0.111 and 0.311 of the Commission's rules, 47 C.F.R. §§ 0.111, 0.311, that within 30 DAYS following the issuance of an order granting a request to re-convert this proceeding back to active status, Southwestern Bell Telephone Company shall file a Response to the Complaint pursuant to section 1.1407 of the Commission's rules, 47 C.F.R. § 1.1407.

11. IT IS FURTHER ORDERED, pursuant to sections 4(i), 4(j), and 224 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), and 224, and sections 1.1401-1.1418 of the Commission's rules, 47 C.F.R. § 1.1401-1.1418, and the authority

¹⁵ 47 C.F.R. § 1.1407.

delegated in sections 0.111 and 0.311 of the Commission's rules, 47 C.F.R. §§ 0.111, 0.311, that the parties shall participate in a status telephone call with Commission staff on **Thursday, March 17, 2005 at 10:00 a.m.**

FEDERAL COMMUNICATIONS COMMISSION

Lisa B. Griffin
Deputy Chief, Market Disputes Resolution Division
Enforcement Bureau